UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/537,792 | 06/06/2005 | David Snyder | US020502 US | 6511 |

28159 7590 07/21/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
Briarcliff Manor, NY 10510-8001

| EXAMINER | |
|---|---|
| LAVERT, NICOLE F | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3762 | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 07/21/2009 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/537,792 | SNYDER, DAVID | |
| | Examiner | Art Unit | |
| | NICOLE F. LAVERT | 3762 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *15 April 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *25-29 & 46-57* is/are pending in the application.

4a) Of the above claim(s) *46-57* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *25-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 August 2008* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/6/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

The Finality of the previous office action sent out on 10 December 2008 has been withdrawn, however due to the amendments submitted on 19 August 2008, the current office action has been made final.

### *Election/Restrictions*

Applicant's election with traverse of claims 25-29 in the reply filed on 15 April 2009 is acknowledged. The traversal is on the ground(s) that there is no basis for determining that claims 25-29 and claims 46-57 are directed to distinct inventions. This is not found persuasive because Claims 25-29 versus 46-53 are related as combination and subcombination. In regards to claims 25-29 (Group I) versus claims 46-53 (Group II), the inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (Group I) as claimed does not require the particulars of the subcombination (Group II) as claimed because the combination does not require the use of an Automatic External Defibrillator (AED) in order to deliver a defibrillation shock but may rather utilize an implantable defibrillator in order to deliver a defibrillation shock. The subcombination has the separate utility such as said method having the capability of continuously and automatically analyzes an ECG signal, i.e. analyzing said signal at or after the end of the claimed CPR interval, in order to avoid undesirable delay in treatment versus utilizing a method of analyzing said ECG signal prior to the end of the CPR interval, as is instantly claimed. Claims 54-57 versus 25-29 are related as combination and subcombination. In regards to claims 25-29 (Group I) versus claims 54-57

(Group III), the inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (Group III) as claimed does not require the particulars of the subcombination (Group I) as claimed because the combination does not require the use of a method analyzing an ECG prior to the end of a CPR interval but may rather analyze said signal at and/or after said CPR interval. The subcombination has separate utility such as a method having the capability of utilizing an implantable defibrillator to deliver a defibrillation shock versus a method of delivering a defibrillation shock via externally disposed sensors coupled to a patient's body, as is instantly claimed. The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

1. Claims 25-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 recites the limitation "the ECG signal" in 6. There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 25, it is unclear as to what is being claimed due to the phrase, "…substantially no signal corruption…" since the claim limitation is vague and indefinite

In regards to claim 25, the limitation of "(c)" and "(d)" look to be steps of the "if" part of step (b) and should be written as so.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. **Claims 25, 27-29** are rejected under 35 U.S.C. 102(e) as being anticipated by Elghazzawi et al. (US 2004/0162585).

Elghazzawi et al. discloses a method for delivering a defibrillation shock using a defibrillator {e.g., [0009] & (Fig 1)} comprising: having a defibrillator initiate a cardio-pulmonary resuscitation (CPR) therapy; prior to the end of the CPR interval, analyzing the ECG signal for signal corruption, if a cessation or absence of CPR precordial compressions is indicated by substantially no signal corruption; analyzing an ECG signal prior to the end of the originally initiated CPR interval to determine if a defibrillation shock is needed (e.g., [0024]-[0026]); and delivering a defibrillation shock if the analyzing step indicates that a defibrillation shock is needed [e.g., 0025]. Note that Elghazzawi et al. discloses that the ECG analysis task

runs simultaneously and continuously during a CPR interval therefore providing the method comprising analyzing an ECG signal for signal corruption prior to the end of the CPR interval as is instantly claimed (e.g., [0024] & [0026]).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claim 26** is rejected under 35 U.S.C. 103(a) as being unpatentable over Elghazzawi et al. (US 2004/0162585).

Elghazzawi et al. discloses the claimed invention having a method for delivering a defibrillation shock using a defibrillator, in which a determination is made as to whether a cardiac rhythm is shockable or not based on ECG analysis that runs simultaneously and continuously during a CPR interval (e.g., [0015] & [0024], except wherein said method includes charging the defibrillator prior to the end of the originally initiated CPR interval. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Elghazzawi et al. with charging the defibrillator prior to the end of the originally initiated CPR interval since it is known in the art that charging said defibrillator prior to the end of the originally initiated CPR interval provides the predictable results pertaining to eliminating premature cessation of needed CPR as a result of false detection of shockable cardiac rhythm and avoids undesirable delays in treatment of re-fibrillation when it occurs by continuously and automatically analyzing the victim's ECG during the CPR interval [e.g., 0024].

***Response to Arguments***

5. Applicant's arguments filed 19 August have been fully considered but they are not persuasive. The Applicant argues that Elghazzawi et al. does not anticipate the claimed invention since Elghazzawi et al. utilizes separate sensors to detect when a rescuer is delivering CPR chest compressions to a patient, in which the present invention needs no additional sensor in order to look at noise for signs of signal corruption. Based on the broadest interpretation of the claims the Examiner disagrees and further points out that the Elghazzawi et al. discloses the present claim invention, in which is stated in the above action.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLE F. LAVERT whose telephone number is (571)270-5040. The examiner can normally be reached on M-F 7:30-5:00p.m. (alt. fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

/Nicole F. LaVert/
Examiner, Art Unit 3762
6.